

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2004 JUN -1 A 10:36

ANTHONY DERUBEIS  
AND  
MACLYN BURNS

Plaintiffs

v.

MAGISTRATE JUDGE RBL CIVIL ACTION NO.

WITTEN TECHNOLOGIES, INC.

Defendant

RECEIPT # 56267  
AMOUNT \$ 150  
SUMMONS ISSUED N/A  
LOCAL RULE 4.1 1  
WAIVER FORM 1  
MCF ISSUED 1  
BY DPTY. GLK. 70.11  
DATE 6/1/04

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGE OF SAID COURT:

PLEASE TAKE NOTICE that Defendant, Witten Technologies, Inc. ("Witten") files this Notice of Removal pursuant to 28 U.S.C. § 1332 and Local Rule 81.1, and in support thereof shows the following:

1. On or about April 21, 2004, Plaintiffs Anthony Derubeis ("Derubeis") and Maclyn Burns ("Burns") filed a civil action styled Anthony Derubeis and Maclyn Burns, Plaintiffs v. Witten Technologies, Inc., Defendant in the Superior Court of the Commonwealth of Massachusetts, in and for Suffolk County, Massachusetts.

2. Witten was served a copy of the Summons and Plaintiff's Complaint on May 3, 2004 (A copy of the Summons and Complaint are attached hereto as Exhibit 1). This Notice of Removal is timely under 28 U.S.C. § 1446 in that it is filed within thirty (30) days of Witten's receipt thereof.

3. As grounds for jurisdiction of this action, there exists diversity of citizenship between Plaintiffs and Witten. Upon information and belief, both Derubeis and Burns were, at

the time that this action commenced, and still are residents of the State of Georgia (See, Plaintiff's Complaint, ¶1). Witten was, at the time this action commenced, and still is a Florida Corporation with its principal place of business in Boston, Massachusetts.

4. It appears from Plaintiff's Complaint that Plaintiffs each are claiming damages in an amount in excess of \$75,000.00 exclusive of interest and costs.

Dated this 1<sup>st</sup> day of June, 2004

On Behalf of Defendant Witten Technologies,  
Inc.

Dated this 1<sup>st</sup> day of June, 2004



Jay M. Presser, Esq.

BBO #405760

Skoler, Abbott & Presser, P.C.

One Monarch Place, Suite 2000

Springfield, Massachusetts 01144

Tel.: (413) 737-4753/Fax (413) 787-1941

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Removal has been served upon Daniel M. Rabinovitz, Esq., Menard, Murphy & Walsh LLP, 60 State Street, 34<sup>th</sup> Floor, Boston, Massachusetts 02109 by first-class, U.S. mail, postage prepaid, on June 1, 2004.



Jay M. Presser, Esq.



JS 44  
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

ANTHONY DERUBEIS and MACLYN BURNS

**DEFENDANTS** 10:36  
2004 JUN -1  
WITTEN TECHNOLOGIES, INC.

U.S. DISTRICT COURT  
DISTRICT OF MASS.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Georgia  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Suffolk, MA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Daniel M. Rabinovitz, Esq.  
Menard, Murphy & Walsh, LLP  
60 State Street-34th Floor  
Boston, MA 02109 (617) 832-2500

**ATTORNEYS (IF KNOWN)**

Jay M. Presser, Esq.  
Skoler, Abbott & Presser, P.C.  
One Monarch Place, Suite 2000  
Springfield, MA 01144 (413) 737-4753

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 28 U.S.C. § 1332.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$  
\$94,127.56

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S) (See instructions): IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 1, 2004

FOR OFFICE USE ONLY

Jay M. Presser, Esq.